

ESTTA Tracking number: **ESTTA475910**

Filing date: **06/02/2012**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91204840
Party	Defendant Arizona Investment & Trading, LLC
Correspondence Address	DUANE M. BYERS NIXON & VANDERHYE, P.C. 901 N GLEBE RD FL 11 ARLINGTON, VA 22203-1853 nixonptomail@nixonvan.com
Submission	Answer
Filer's Name	Duane M. Byers
Filer's e-mail	nixonptomail@nixonvan.com, dmb@nixonvan.com
Signature	/dmb/
Date	06/02/2012
Attachments	5745-14 answer 6-2-12.pdf (8 pages)(79876 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Philip Morris USA Inc.)	
)	
Opposer,)	Opposition No. 91204840
)	
v.)	
)	Application No. 85333114
Arizona Investment & Trading, LLC)	
Applicant.)	

ANSWER TO NOTICE OF OPPOSITION

Applicant responds to the Notice of Opposition as follows. The following paragraph numbers refer to the paragraph numbers in the Notice of Opposition. Also, applicant objects to opposer's improper and incorrect reference to applicant's mark as the Disputed Mark.

1. Applicant does not have sufficient information to either admit or deny these allegations and, therefore, denies same and leaves Opposer to its proof.
2. Admitted.
3. Applicant does not have sufficient information to either admit or deny these allegations and, therefore, denies same and leaves Opposer to its proof.
4. Applicant does not have sufficient information to either admit or deny these allegations and, therefore, denies same and leaves Opposer to its proof.
5. Applicant does not have sufficient information to either admit or deny these allegations and, therefore, denies same and leaves Opposer to its proof.
6. Applicant does not have sufficient information to either admit or deny these allegations and, therefore, denies same and leaves Opposer to its proof.

7. Applicant does not have sufficient information to either admit or deny these allegations and, therefore, denies same and leaves Opposer to its proof.
8. Admitted.
9. Admitted.
10. Admitted.
11. Admitted.
12. Admitted.
13. Applicant does not have sufficient information to either admit or deny these allegations and, therefore, denies same and leaves Opposer to its proof.
14. Denied.
15. Denied.

AFFIRMATIVE DEFENSES

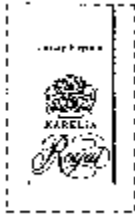
16. Opposer's Notice of Opposition is defective and fails to state a claim against Applicant upon which relief can be granted.
17. Upon information and belief, Opposer's alleged trademark is limited in scope in view of the Opposer's filings and assertions during prosecution of its applications, and in view of the plethora of third party VIRGINIA trademarks, registrations, and activities. In this regard, please see the following third party VIRGINIA trademark application and registrations – some of which predate any of Opposer's alleged rights:

**VIRGINIA
BRIGHTS**

Word Mark	VIRGINIA BRIGHTS
Goods and Services	IC 034. US 017. G & S: Cigarettes. FIRST USE: 18930900. FIRST USE IN COMMERCE: 18930900
Mark Drawing Code	(5) WORDS, LETTERS, AND/OR NUMBERS IN STYLIZED FORM
Serial Number	71125234
Filing Date	November 24, 1919
Current Basis	1A
Original Filing Basis	1A
Registration Number	0133272
Registration Date	July 20, 1920
Owner	(REGISTRANT) Liggett & Myers Tobacco Company CORPORATION NEW JERSEY 212 FIFTH AVENUE New York NEW YORK (LAST LISTED OWNER) LIGGETT GROUP LLC LTD. LIABILITY CO. DELAWARE 100 MAPLE LANE MEBANE NORTH CAROLINA 27302
Assignment Recorded	ASSIGNMENT RECORDED
Prior Registrations	0023581
Type of Mark	TRADEMARK
Register	PRINCIPAL
Affidavit Text	SECTION 8(10-YR) 20010205.
Renewal	3RD RENEWAL 20010205
Live/Dead Indicator	LIVE

Word Mark	GOLDEN VIRGINIA
Goods and Services	IC 034. US 017. G & S: Smoking Tobacco. FIRST USE: 19401000. FIRST USE IN COMMERCE: 19401000
Mark Drawing Code	(1) TYPED DRAWING
Serial Number	72142717
Filing Date	April 20, 1962
Current Basis	1A

Original Filing Basis	1A
Registration Number	0747146
Registration Date	March 26, 1963
Owner	(REGISTRANT) Lane Limited CORPORATION NEW YORK 2280 MOUNTAIN INDUSTRIAL BOULEVARD TUCKER GEORGIA 30084
Assignment Recorded	ASSIGNMENT RECORDED
Attorney of Record	HOWARD B BARNABY
Type of Mark	TRADEMARK
Register	PRINCIPAL-2(F)
Affidavit Text	SECT 15. SECT 8 (6-YR). SECTION 8(10-YR) 20030310.
Renewal	2ND RENEWAL 20030310
Live/Dead Indicator	LIVE



Word Mark	LUXURY VIRGINIA KARELIA ROYAL
Goods and Services	IC 034. US 002 008 009 017. G & S: raw and manufactured tobacco, cigarettes, cigars, cigarillos, cheroots; matches; ashtrays not made of precious metals; and cigarette lighters not made of precious metals and parts therefore. FIRST USE: 19931130. FIRST USE IN COMMERCE: 19950208
Mark Drawing Code	(3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS
Design Search Code	03.01.02 - Lion insignia (heraldic lion) 19.07.03 - Boxes, cigarette 24.01.02 - Shields or crests with figurative elements contained therein or superimposed thereon 24.09.07 - Advertising, banners; Banners 24.11.02 - Crowns open at the top
Serial Number	75093895
Filing Date	April 25, 1996
Current Basis	1A;44E
Original Filing Basis	1A;44E
Published for Opposition	July 15, 1997
Registration	2102844

Number
Registration Date October 7, 1997
Owner (REGISTRANT) Karelia Tobacco Company Inc. JOINT STOCK INCORPORATED COMPANY GREECE P.O. Box 22 Athinon Avenue GR-24100 Kalamata GREECE
Attorney of Record W. Mack Webner
Type of Mark TRADEMARK
Register PRINCIPAL
Affidavit Text SECT 15. SECT 8 (6-YR). SECTION 8(10-YR) 20070928.
Renewal 1ST RENEWAL 20070928
Live/Dead Indicator **LIVE**

Word Mark **VIRGINIANS**
Goods and Services IC 034. US 002 008 009 017. G & S: cigars and stogies prepared for smoking. FIRST USE: 19280601. FIRST USE IN COMMERCE: 19280601
Mark Drawing Code (1) TYPED DRAWING
Serial Number 75105355
Filing Date May 16, 1996
Current Basis 1A
Original Filing Basis 1A
Published for Opposition August 19, 1997
Registration Number 2111763
Registration Date November 11, 1997
Owner (REGISTRANT) M. MARSH & SON CORPORATION WEST VIRGINIA 915 Market Street Wheeling WEST VIRGINIA 26003
(LAST LISTED OWNER) NATIONAL CIGAR CORPORATION CORPORATION DELAWARE 407 NORTH MAIN STREET FRANKFORT INDIANA 46041
Assignment Recorded ASSIGNMENT RECORDED
Attorney of Record ROBERT J. SAMOL
Type of Mark TRADEMARK
Register PRINCIPAL-2(F)
Affidavit Text SECT 15. SECT 8 (6-YR). SECTION 8(10-YR) 20070828.
Renewal 1ST RENEWAL 20070828
Live/Dead Indicator **LIVE**

Word Mark	VIRGINIA HERITAGE
Goods and Services	IC 034. US 002 008 009 017. G & S: Cigarettes; Cigars
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Serial Number	85193996
Filing Date	December 9, 2010
Current Basis	1B
Original Filing Basis	1B
Published for Opposition	May 1, 2012
Owner	(APPLICANT) Sweet Mark, LLC LIMITED LIABILITY COMPANY VIRGINIA 1909 Boyer Road Powhatan VIRGINIA 23139
Attorney of Record	Christopher J. Mugel
Disclaimer	NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "VIRGINIA" APART FROM THE MARK AS SHOWN
Type of Mark	TRADEMARK
Register	PRINCIPAL
Live/Dead Indicator	LIVE

18. Upon information and belief, there is no likelihood of confusion, mistake and/or deception with respect to Applicant's trademark for the goods identified in Applicant's U.S. Trademark Application in view of, *inter alia*, the limited scope of Opposer's alleged trademark rights, the plethora of third party VIRGINIA trademarks, the differences in the parties' trademarks, the different goods of the parties, the different channels of trade of the parties, the different targeted customers of the parties, and the sophistication of the different targeted customers of the parties.
19. Applicant's targeted customers are sophisticated people who would not be easily confused.
20. Applicant's goods identified in the subject application are not impulsively purchased by customers, but, instead, are purchased by knowledgeable people

after a reasoned study. As a result, a likelihood of confusion with Opposer's alleged trademark is precluded.

21. Applicant's goods identified in the subject application are "Cigarettes, namely, cigarettes that are only manufactured in the United States and that are then **only sold internationally.**" (emphasis added) Significantly, Opposer has not opposed any of Applicant's foreign applications, including Applicant's European application (CTM application) – which has proceeded to registration as CTM Registration No. 010111813 in Class 34 covering "Tobacco; Smokers' articles (e.g., cigarettes); Matches." This inaction by Opposer confirms that Applicant's "cigarettes that are only manufactured in the United States and that are then **only sold internationally**" under the VIRGINIA20 trademark are of no concern to Opposer.

WHEREFORE, Applicant prays that the Opposition be dismissed and that registration be granted.

Date: June 2, 2012

Respectfully submitted,

NIXON & VANDERHYE P.C.

By: /Duane M. Byers/

Duane M. Byers

Attorneys for Applicant,

Arizona Investment & Trading, LLC

901 North Glebe Road, 11th Floor
Arlington, VA 22203-1808
Telephone: 703-786-7421
Email: nixonptomail@nixonvan.com
and dmb@nixonvan.com

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing is being served on Opposer's counsel via email at trademarkdocketing@aporter.com, roberta.horton@aporter.com, joanna.persio@aporter.com on June 2, 2012.

/Duane M. Byers/